



Consultation on implementation of the Regulations to restrict exit payments in the public sector

1. Executive Summary

Exit payments to employees leaving the public sector workforce in 2016-2017 cost the taxpayer £1.2billion^[1], with payments at and above £100,000 amounting to £0.2billion. Exit payments can be important to employers' ability to reform and react to new circumstances, whilst providing support for employees as they find new employment or as a bridge until retirement age. However, public sector employers have a responsibility to demonstrate that they are using public money efficiently and responsibly, and to ensure that pay and terms are always proportionate, justifiable and fair to the taxpayers who fund them.

The government does not believe that the majority of six figure exit payments, which are far in excess of those available to most workers in the public sector or wider economy, are proportionate or provide value for money for taxpayers.

The government therefore introduced powers to cap exit payments in the public sector at £95,000 in the Small Business, Enterprise and Employment Act 2015. This consultation sets out the proposed method of implementing that cap, including which bodies should be in scope.

These Regulations will help public sector employers to ensure exit payments represent value for money to the taxpayer who funds them.

[1] Whole of Government Accounts 2016-17 p70



2. Introduction

2.1 Policy background

Exit payments associated with loss of employment, including redundancy, are important to employers' ability to reform, and an important source of support for employees as they find new employment, or as a bridge until retirement age. However, it is also important that exit payments are proportionate and fair to the taxpayer and the government is concerned about the number of exit payments made to public sector workers that exceed or come close to £100,000.

Such payments can exceed three times the average annual earnings in the public sector[1], and are far higher than the value of exit payments made to the majority of public sector workers[2]. The government does not believe that such payments often provide value for money or are fair to the taxpayers who fund them.

The government legislated for a cap of £95,000 on exit payments (the cap) in the public sector in the Small Business Enterprise and Employment Act 2015 (the 2015 Act) as amended by the Enterprise Act 2016 (the 2016 Act). The 2015 Act sets out the duty to implement the cap through secondary legislation.

This consultation sets out the [proposed draft Regulations](#), [Schedule to the Regulations](#), accompanying [guidance](#) and [Directions](#). The government welcomes comments on the draft Regulations.

The draft Schedule 1 sets out in detail the proposed scope of the Regulations for this first stage of implementation. The government will expand the bodies in scope to the whole of the public sector in due course, with exemptions for certain bodies. Exemptions will be considered on a case by case basis, taking into account the nature of and functions undertaken by the employer.

[1] Mean public sector earnings according to the ONS: £29,574

[2] Whole of Government Accounts 2016-17 p70 Table 4.E

2.2 Policy intention

Sections 153A to 153C of the 2015 Act enable HM Treasury to make Regulations restricting public



sector exit payments to a maximum of £95,000. The draft Regulations define the types of payments intended to be subject to the cap, how the proposed cap is intended to operate, and the scope of the Regulations. The bodies in scope of the draft regulations are set out in Schedule 1 of the draft Regulations. It is the government's intention to extend the scope of the Regulations to the whole public sector in due course.

2.3 Aim and scope of the consultation

The government will consider the consultation responses and decide on how best to achieve its aims in relation to the questions and proposals set out in this document. Responses are particularly welcomed from:

- employing bodies within the scope of the draft Regulations as well as employing bodies within the wider public sector but not included in Schedule 1 at present
- bodies representing public sector employers
- employees and their representative bodies
- members of the academic community with expertise in this area
- pay, pension, remuneration and HR professionals in both the private and public sectors
- anyone else who may be impacted by this consultation

2.4 How to respond

This consultation will run for twelve weeks and will close on 3rd July.

We would ask to respond by **17 MAY** to allow time to collate responses. You can respond by answering [this online survey](#).

When responding please provide information on the number and nature of people you represent.

2.5 Consultation principles

This consultation is being run in accordance with the government's [Consultation Principles](#)



3. Proposed Scope of Draft Regulations

Employers in the whole of the public sector have a responsibility to demonstrate that they are using public money efficiently and responsibly, and to ensure that pay and terms are always proportionate, justifiable and fair to taxpayers.

In order to determine the scope of the cap, HM Treasury will be guided by the Office for National Statistics (for National Account purposes) classification of bodies within the central and local government, and non-financial public corporation sectors. There will be a limited number of exemptions.

The government is proposing a staged process of implementation across the public sector. The first stage will capture most public sector employees, before extending the cap to the rest of the public sector in the second stage. Prioritising in this way will ensure most exit payments in the public sector are limited to £95,000 without further delay, while work continues on expanding the scope of the Regulations.

3.1 Bodies in scope in the current draft Regulations

The draft Regulations ([Click here to view the Regulations](#)) apply to payments made by public sector authorities to employees and by public sector offices to office holders. However, they do not apply to the following payments:

- A. Payments made by a relevant Scottish authority, as defined in s 153B(5) of the 2015 Act (see section 5.1 below)
- B. A relevant Welsh exit payment, as defined in s 153B(6) of the 2015 Act
- C. Payments made by Northern Irish authorities which wholly or mainly exercise devolved functions

The following categories of public sector employer are within scope of these Regulations where they fall within the responsibility of the UK government, regarding their employment:

- the UK Civil Service, its executive agencies, non-ministerial departments and non-departmental public bodies (including Crown non-departmental public bodies and Her Majesty's Prison and Probation Service)
- the NHS in England and Wales^[1]
- academy schools
- local government including fire authorities' employees and maintained schools



- police forces, including civilian and uniformed officers

Some bodies have more than one classification. For example, if an executive agency is also classified as a type of body not currently in scope of the cap such as a trading fund, it should not be captured during this round of implementation.

The full list of proposed public sector bodies in scope of the draft Regulations are listed in draft Schedule 1 ([Click here to view the Schedule](#)). The categories of final employers which will be included in Schedule 1 is subject to responses to the consultation.

All public sector employers should make value for money decisions on exit payments, and spend public money responsibly. It is the government's strong expectation that bodies not in the proposed scope of these Regulations will come forward with their own, commensurate cap on exit payments.

[1] The 2015 Act confers power to cap exit payments in the NHS in Wales, because the compensation schemes are not devolved to Welsh Ministers.

3.2 Bodies and payments exempt in the draft Regulations

The government proposes that the Secret Intelligence Service, the Security Service, the Government Communications Headquarters and the Armed Forces should be exempt from the cap. Therefore, these employers are not listed in draft Schedule 1 to the Regulations.

Careers in these organisations have unique features, and the special requirements made of individuals - including the transition to civilian life - are reflected in the range and level of compensation payments for these workforces. Compensation and resettlement payments make up a core part of the overall remuneration and reward package for those working in these fields, and payments are sometimes required in order to ensure that individuals are properly compensated for what can be lifelong impacts, felt at relatively early ages. The government believes it is right that - in general - these employers have flexible and responsive remuneration practices which may fall outside of the scope of the draft Regulations.

As a general rule accrued pension rights, including rights to pension commutation lump sums, are not within scope of the draft Regulations because they do not normally involve any cost to the



employer. However, in some cases pension payments do involve an additional employer cost relating to an exit and often represent a significant amount of an individual's exit payment. For this reason they will be within scope of the draft Regulations unless an exemption applies. These payments arise when an employer has to make a 'pension strain' payment, for example to provide the pension scheme member with an immediate unreduced pension before the member's Normal Pension Age or when an employer has to make a pension commutation related payment.

Fire and Rescue Authorities (FRAs) have discretion to remove the current commutation lump sum restriction (of 2.25 x pension) that applies to firefighter members of the 1992 Firefighters' Pension Scheme who are under age 55 and have less than 30 years' service. Where a FRA exercises this discretion, this results in an employer related cost because it is required to make a payment equivalent to the additional amount to the member's pension fund account. It is proposed that these payments should be exempt from the scope of the Regulations as they do not fund an increase in the actuarial value of the firefighter's pension.

Therefore, regulation 7(c)(i) exempts payments made by a FRA to their pension fund account, where the FRA exercises its discretion to allow a firefighter (who is subject to the above 2.25 times pension commutation lump sum restriction) to commute up to a maximum of 25% of their annual pension for a pension lump sum. Effectively, this discretion aligns with the commutation entitlement available to firefighters who are aged 55 or over, or who have accrued the maximum 30 years' service.

The government is also considering an exemption for payments made by FRAs to their pension fund account in respect of firefighters who are unable to maintain operational fitness through no fault of their own and where the FRA has agreed to put into payment an authority initiated early retirement pension. This will honour the government's [previous commitment](#) that firefighter members of the 2006 and 2015 Firefighters' Pension Schemes in these circumstances should be awarded an unreduced pension if they cannot be redeployed.

AT THIS POINT, PLEASE ANSWER THE FOLLOWING QUESTIONS ON THE SURVEY

Does draft [Schedule 1 to the Regulations](#) capture the bodies intended (described section 3.1 above)? If not, please provide details.



Do you agree with the current list of bodies in scope, for the first round of implementation? If not, please provide reasons.

Do you agree with the exemptions outlined? If not, please provide evidence.



4. Guidance and Directions

The government welcomes comment on the attached [guidance](#) and [Directions](#).

The guidance aims to explain, in plain English, how the draft Regulations should be applied. In particular, the guidance details the circumstances in which the cap may and must be relaxed, and which actors have the power to relax the cap.

Section 5 of the guidance and the separate mandatory HMT directions are intended to ensure that the cap must be relaxed in specific mandatory cases, for example where a settlement agreement is entered into following a whistleblowing or discrimination complaint, and where it may be relaxed in specific discretionary case, for example where the imposing the cap would cause undue hardship.

This reflects the government's position – and the position reflected in the draft Regulations - that the public sector exit payment cap is not designed to discourage workers from making disclosures covered by whistleblowing law or to prevent such people from receiving an appropriate remedy from an Employment Tribunal.

AT THIS POINT, PLEASE ANSWER THE FOLLOWING QUESTIONS ON THE SURVEY

Does the guidance adequately support employers and individuals to apply the draft Regulations as they stand? If not, please provide information on how the guidance could be enhanced.

Is the guidance sufficiently clear on how to apply the mandatory and discretionary relaxation of the Regulations, especially in the case of whistleblowers?

Is there further information or explanation of how the Regulations should be applied which you consider should be included in the guidance? If so, please provide details.



5. Devolution summary and equalities impacts

5.1 Devolution

The cap policy extends to all the bodies where employment terms are subject to approval by the UK government (subject to exemptions set out in the remaining paragraphs 5.1).

Payments made by authorities which wholly or mainly exercise functions that could be devolved to Northern Ireland are not covered by the draft Regulations.

Payments made by a relevant Scottish authority, namely the Scottish Parliamentary Corporate authority or any authority which wholly or mainly exercises functions devolved to Scotland are also not covered by these Regulations, with the exception of payments made by the Scottish Administration to holders of non Ministerial offices in the Administration or to staff of the Administration, which are covered by these Regulations.

Relevant Welsh exit payments, namely payments made to the holders of the offices specified in s 153B(6) of the Enterprise Act 2016 are not covered by these Regulations.

The Regulations contain a power in regulation 12 to relax the exit payment cap following compliance with [HMT Directions](#) or with consent of HMT, however this power does not apply to exit payments made by a devolved Welsh authority.

5.2 Equalities

An equalities impact assessment of the cap was conducted in the previous consultation, ahead of legislation on the policy and [can be found here](#).

If, following consultation, the government decides to implement a two stage implementation process, it will do so on the basis of a further assessment of the equalities impact.



AT THIS POINT, PLEASE ANSWER THE FOLLOWING QUESTIONS ON THE SURVEY

Are there other impacts not covered above which you would highlight in relation to the proposals in this consultation document? If Yes, please provide details.

Are you able to provide information and data in relation to the impacts set out above?